STATE TAILOR SDN BHD

v.

NALLAPAN

COURT OF APPEAL, PUTRAJAYA
RICHARD MALANJUM JCA
HASHIM YUSOFF JCA
TENGKU BAHARUDIN SHAH JCA
[CIVIL APPEAL NO: C-02-602-1998]
23 FEBRUARY 2005

LAND LAW: *Transfer - Transfer of land - Form 14A National Land Code - Signature on form signed by another allegedly as attorney for transferor - Omission to refer to power of attorney - Failure to deposit power of attorney with land office - Whether transfer rendered invalid - Whether transfer ratified by transferor*

LAND LAW: *Indefeasibility of title and interests - Forged transfer - Bona fide purchaser for value - Overriding consideration - National Land Code, s. 340, Form 14A*

The High Court granted the plaintiff (the respondent herein) his application for the return of a piece of land owned by him ('the subject land') that was sold by the 1st defendant to the 2nd defendant (the appellant herein). The 2nd defendant now appealed against that decision. The issues were: [1] whether Form 14A ('Form 14A') of the National Land Code ('NLC') signed by the 1st defendant allegedly as the attorney for the plaintiff was valid; [2] whether Form 14A was validated on the ground that it was registered with the Land Office; [3] whether the transfer of the subject land to the 2nd defendant was ratified in a subsequent agreement between the plaintiff and the 1st defendant; and [4] whether the 2nd defendant was a *bona fide* purchaser for value and thus attained title of the subject land.

Held (dismissing the appeal)
Per Richard Malanjum JCA delivering the judgment of the court:

[1] There was no dispute that the signature of the transferor appearing in Form 14A did not belong to the plaintiff. Further, the denial of the plaintiff was unchallenged. Hence, in truth the plaintiff never signed the Form 14A for the purpose of transferring the ownership of the subject land to the 2nd defendant. (p 179 d)

[2] DW1, the director of the 2nd defendant, did not dispute the 1st defendant's claim that the signature in Form 14A was his (the 1st defendant's). DW1 admitted and confirmed that she was present when the 1st defendant signed the Form 14A. However, on a plain reading of the Form 14A the said signature represented to the whole world that it belonged to the plaintiff. The Land Office obviously perceived that to be the case when the Form 14A was accepted for registration. Therefore, the 1st defendant's insertion of his signature which represented to be that of the plaintiff/transferor was plain forgery. Hence s. 340(2)(b) NLC was relevant and applicable. Accordingly the 2nd defendant's title or interest in the subject land would not be indefeasible on account of the forged signature in the Form 14A. (pp 179 g-h & 180 a)

[3] Other than the fact that the 1st defendant's signature was attested by a solicitor, Form 14A did not indicate that the 1st defendant signed it as the attorney for the plaintiff. Further the registration number of the power of attorney was not stated as should have been done if the Form 14A was indeed signed by the attorney of the transferor. In addition, the sale and purchase agreement of the subject land did not make any reference to any power of attorney despite the fact that the signatures therein were attested by the same solicitor who did the attestation in the Form 14A. The plaintiff's name was inserted as the vendor while the signature was that of the 1st defendant without any mention of his capacity in so doing. The ratification agreement, too, did not state that the 1st defendant was exercising his powers as the attorney for the plaintiff when he transferred the subject land to the 2nd defendant. (p 181 e-h)

[4] The documentary evidence was self-evident. The 1st defendant was not exercising his power as the attorney of the plaintiff when he signed the Form 14A. The oral evidence of witnesses and the evidence of the 1st defendant himself supported such a conclusion. Further, after Form 14A was registered, the 2nd defendant and DW1 made no attempt to rectify the process by forwarding the power of attorney to the Land Office or take such other action indicative of what was now asserted. (pp 182 g-h & 183 a-b)

[5] The power of attorney was never given to the Land Office whether before or at the time of presenting the Form 14A for registration. There was also no evidence adduced to indicate that the Land Office was informed of the true status of the signature of the 1st defendant. In fact the impression given was that the signature found in Form 14A belonged to the plaintiff. Moreover, it was never shown that the power of attorney complied with the requirements of the Powers Of Attorney Act 1949 including its registration with the court's registry. (pp 183 h & 184 a)

[6] The basic element of good faith is the absence of fraud, deceit or dishonesty and the knowledge or means of knowledge of such at the time of entry into a transaction. But the overriding consideration is "the particular circumstances of each case". In the present case, there were at least three crucial facts or circumstances that warranted consideration, namely the undisputed signature of the 1st defendant in the Form 14A, the admission by DW1 that she was present when the 1st defendant signed the document and the availability of the services of a solicitor to DW1. (p 184 c-e)

[7] DW1 who was the actual person who concluded the transaction knew of the falsity of the signature of the 1st defendant in the Form 14A since she was present at the time it was put down. She was aware of the deceit involved and practiced upon not only to the plaintiff but also to the Land Office. Yet DW1 and her solicitor at that point of time allowed it to happen and in fact benefited from such deception and falsity. (p 184 e-h)

[8] The ratification agreement was not of any assistance to the 2nd defendant for the following reasons. Firstly, the 2nd defendant was not privy to it. Secondly, the terms of the said agreement were conflicting for it was never expressed that the 1st defendant acted as the attorney of the plaintiff or that he was exercising his power under a power of attorney. Thirdly, if indeed the plaintiff agreed and consented to the transfer, the reasons or grounds for the demand of retransfer was not stated. The promise by the 1st defendant to endeavour to secure the retransfer would also have been unnecessary. Accordingly, the terms of the said agreement only strengthened the assertion that when Form 14A was signed by the 1st defendant something was amiss and known to those involved. (p 185 b-e)

*[**Bahasa Malaysia** Translation Of Headnotes*

Mahkamah Tinggi telah membenarkan permohonan plaintif (responden di sini) untuk pengembalian sekeping tanah miliknya ('tanah berkenaan') yang telah dijual oleh defendan pertama kepada defendan kedua (perayu di sini). Perayu kedua kini merayu terhadap keputusan tersebut. Isu-isunya adalah: [1] sama ada Borang 14A ('Borang 14A') Kanun Tanah Negara ('KTN') yang ditandatangani oleh defendan pertama, yang berlagak sebagai wakil plaintif, sah; [2] sama ada Borang 14A menjadi sah kerana telah didaftarkan di Pejabat Tanah; [3] sama ada pemindahan tanah berkenaan kepada defendan kedua telah dipersahkan oleh perjanjian berikutnya di antara plaintif dan defendan pertama; dan [4] sama ada defendan kedua merupakan pembeli *bona fide* untuk nilai dan kerana itu mendapat hakmilik tanah berkenaan.

Diputuskan (menolak rayuan)
Oleh Richard Malanjum HMR menyampaikan penghakiman mahkamah:

[1] Tidak dipertikai bahawa tandatangan pemindah yang terdapat pada Borang 14A bukanlah tandatangan plaintif. Selain itu, penyangkalan yang dibuat oleh plaintif tidak dicabar. Oleh itu, plaintiff pada hakikatnya tidak pernah menandatangani Borang 14A bagi tujuan memindah milikan tanah berkenaan kepada defendan kedua.

[2] DW1, pengarah defendan kedua, tidak mempertikai tuntutan defendan pertama bahawa tandatangan pada Borang 14A adalah tandatangannya (defendan pertama). DW1 mengakui dan mengesahkan bahawa beliau hadir sewaktu defendan pertama menandatangani Borang 14A. Apapun, atas pembacaan biasa Borang 14A, tandatangan itu mengisytiharkan kepada seluruh dunia bahawa ia adalah milik plaintif. Pejabat Tanah melihatnya begitu apabila ia menerimanya untuk pendaftaran. Oleh yang demikian, penurunan tandatangan defendan pertama dengan menggambarkannya sebagai tandatangan plaintif/pemindah jelas suatu penipuan. Seksyen 340(2) KTN, dengan itu, adalah relevan dan terpakai. Memandangkan tandatangan pada Borang 14A telah ditiru, maka hakmilik atau kepentingan defendan kedua dalam tanah berkenaan tidaklah menjadi tak boleh disangkal.

[3] Selain dari fakta bahawa tandatangan defendan pertama telah diakusaksi oleh seorang peguamcara, Borang 14A tidak menunjukkan bahawa defendan pertama telah menandatanganinya sebagai wakil diri plaintif. Selain itu, nombor pendaftaran surat kuasa wakil tidak dinyatakan sebagaimana sepatutnya dibuat jika Borang 14A tersebut ditandatangani oleh seorang wakil diri kepada pemindah. Tambahan, perjanjian jual beli tanah berkenaan tidak membuat sebarang rujukan kepada apa-apa surat kuasa wakil, walaupun tandatangan-tandatangan di dalamnya diperakui oleh peguamcara yang sama yang membuat akusaksi dalam Borang 14A. Nama plaintif telah diselit sebagai penjual sementara tandatangannya pula adalah kepunyaan defendan pertama tanpa disebut apakah kapasiti defendan pertama tersebut. Perjanjian pengesahan juga tidak menyatakan bahawa defendan pertama sebenarnya menjalankan kuasa-kuasanya sebagai wakil diri kepada plaintif apabila ia memindahkan tanah berkenaan kepada defendan kedua.

[4] Keterangan-keterangan dokumentari adalah jelas. Defendan pertama bukanlah melaksanakan kuasanya sebagai wakil diri kepada plaintif apabila beliau menandatangani Borang 14A. Keterangan lisan saksi-saksi dan keterangan defendan pertama menyokong rumusan ini. Selain itu, selepas Borang 14A didaftarkan, defendan kedua dan DW1 tidak membuat sebarang percubaan untuk membetulkan proses dengan mengemukakan surat kuasa wakil kepada Pejabat Tanah atau mengambil langkah-langkah lain sejajar dengan apa yang ditekankannya sekarang.

[5] Surat kuasa wakil tidak pernah diberikan kepada Pejabat Tanah sama ada sebelum atau semasa penyerahan Borang 14A untuk pendaftaran. Juga tidak terdapat keterangan yang menunjukkan bahawa Pejabat Tanah telah diberitahu berkenaan status sebenar tandatangan defendan pertama. Malahan, gambaran yang diberikan adalah bahawa tandatangan pada Borang 14A adalah tandatangan plaintif. Selain itu, ianya tidak pernah ditunjukkan bahawa surat kuasa wakil mematuhi kehendak-kehendak Akta Surat Kuasa Wakil 1949, termasuk pendaftarannya di pejabat pendaftaran mahkamah.

[6] Elemen asas niat baik adalah ketiadaan fraud, penipuan atau ketidakjujuran serta pengetahuan atau kemampuan mengetahui perkara tersebut sewaktu memasuki sesuatu transaksi. Namun, pertimbangan terpenting adalah "halkeadaan tertentu sesuatu kes". Dalam kes semasa, terdapat sekurang-kurangnya tiga fakta atau halkeadaan penting yang wajar dipertimbangkan, iaitu tandatangan defendan pertama pada Borang 14A yang tidak disangkal, pengakuan oleh DW1 bahawa beliau hadir apabila defendan pertama menandatangani dokumen dan kewujudan perkhidmatan guaman kepada DW1.

[7] DW1 yang merupakan orang sebenar yang memeterai transaksi tahu mengenai kepalsuan tandatangan defendan pertama pada Borang 14A kerana beliau hadir semasa ia diperturunkan. Beliau sedar tentang penipuan yang berlaku, yang dilakukan bukan sahaja terhadap plaintif tetapi juga terhadap pejabat tanah. Walaupun begitu, DW1 dan peguamcaranya pada waktu itu membenarkan penipuan itu berlaku dan malah telah mendapat manfaat dari penipuan dan pemalsuan tersebut.

[8] Perjanjian pengesahan tidak sekali-kali membantu atas sebab-sebab berikut. Pertama, defendan kedua bukan privi kepadanya. Kedua, terma-terma perjanjian tersebut adalah bertelagah kerana ia langsung tidak menyatakan bahawa defendan pertama bertindak sebagai wakil diri kepada plaintif atau bahawa beliau melaksanakan kuasa di bawah suatu surat kuasa wakil.

Ketiga, jika betul plaintif bersetuju kepada pemindahan, sebab dan alasan bagi penuntutan pemindahan balik telah tidak dinyatakan. Janji yang dibuat oleh defendan pertama untuk berusaha mendapatkan pemindahan semula juga adalah sebenarnya tidak perlu. Maka itu, terma-terma perjanjian tersebut hanya menguatkan lagi hujah bahawa, apabila Borang 14A ditandatangani oleh defendan pertama, ada sesuatu yang tidak kena yang diketahui oleh pihak-pihak yang terlibat.]

Case(s) referred to:

Adorna Properties Sdn Bhd v. Boonsom Boonyanit [2001] 2 CLJ 133 FC ***(refd)***
Cheong Khean Sheng v. PP [1970] 2 MLJ 175 ***(refd)***
Chiew Lip Seng v. Perwira Habib Bank (M) Bhd [1999] 5 CLJ 112 HC ***(refd)***
Choo Ah Kow v. Yeow Yew Chiam [1989] 1 MLJ 187 ***(refd)***
Dewan Undangan Negeri Kelantan & Anor v. Nordin Salleh & Anor [1992] 2 CLJ 1125; [1992] 1 CLJ (Rep) 72 SC ***(refd)***
Doshi v. Yeoh Tiong Lay [1975] 1 MLJ 85 ***(refd)***
Doshi v. Yeoh Tiong Lay [1975] 1 MLJ 85 ***(refd)***
Gian Singh & Co Ltd v. Banque De L'Indochine [1974] 2 MLJ 177 PC ***(refd)***
Goh Hooi Yin v. Lim Teong Ghee & Ors [1990] 2 CLJ 203; [1990] 2 CLJ (Rep) 48 HC ***(refd)***
Government of Perak v. Muniandy [1986] 1 MLJ 490 ***(refd)***
Mohamed Buyong v. Pemungut Hasil Tanah Gombak & Ors [1982] 2 MLJ 53 ***(refd)***
OCBC Bank (M) Bhd v. Pendaftar Hakmilik, Negeri Johor Darul Takzim [1999] 2 CLJ 949 CA ***(refd)***
Ong Ban Chai & Ors v. Seah Siang Mong [1998] 3 CLJ 637 CA ***(refd)***
Pekan Nenas Industries Sdn Bhd v. Chang Ching Chuen & Ors [1998] 1 CLJ 793 FC ***(refd)***
Tai Lee Finance Co Sdn Bhd v. Official Assignee & Ors [1983] 1 CLJ 183; [1983] CLJ (Rep) 387 FC ***(refd)***
Tajjul Ariffin Mustafa v. Heng Cheng Hon [1993] 3 CLJ 117 SC ***(refd)***

Legislation referred to:

National Land Code, s. 340(2)(b), (3)
Powers of Attorney Act 1949, s. 4

Other source(s) referred to:

Dr David Wong, *Tenure and Land Dealings in the Malay States*, p 361

For the appellant - Malik Imtiaz Sarwar (Arthur Wang Ming Way with him) M/s Arthur Wang, Lian & Assoc
For the respondent - Syed Sharhani Ahmad; M/s Syed & Assoc

[Appeal from the High Court, Temerloh; Civil Suit No: 22-231-1986]

Reported by Usha Thiagarajah

JUDGMENT

Richard Malanjum JCA:

Introduction

Before us is an appeal against the decision of the High Court sitting at Temerloh, Pahang granting the respondent the following orders, namely:

(1) The 2nd defendant (that is the Appellant before us) is to effect the retransfer of the land to the plaintiff failing which Assistant Registrar of High Court Temerloh shall execute all relevant documents necessary to carry out into effect the retransfer. The 2nd defendant shall repay the full consideration (RM32,000) for the sale of the land to the 2nd defendant. The interests 8% p.a. shall be imposed on the consideration from the date of transfer (6/6/83) to final payment.

(2) The 1st defendant shall pay the costs of this suit to plaintiff and 2nd defendant.

Unfortunately no written judgment was rendered by the learned judge prior to his retirement.

What we have before us now are the Notes of Proceeding and some of the documents tendered during the trial. Hence when the appeal came up for hearing we were tempted to promptly order a retrial.

But on further perusal of the Appeal Record and having heard the submissions of learned counsel for the parties including the fact that they left it to this court to decide on the issue of retrial but at the same time stating the disadvantages of having it, we were and are convinced that basically the primary issues involved are questions of law requiring no or minimum findings on disputed facts. And even on factual matrix we are of the view that demeanour of witnesses plays no or minimal role. Hence the question of absence of appreciation of the evidence by the trial Judge should hardly arise.

In our view the undisputed facts and admitted facts together with the documentary evidence tendered during the trial are more than sufficient materials upon which the answers to the issues raised by the respective parties could be found thereby determining the fate of the orders granted by the trial court. Indeed neither of the parties ever raised the issue of being prejudiced by the absence of a written judgment from the trial court. And for that we are reminded of what Edgar Joseph Jr. SCJ said in *Dewan Undangan Negeri Kelantan & Anor v. Nordin bin Salleh & Anor* [1992] 2 CLJ 1125; [1992] 1 CLJ (Rep) 72:

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> A denial of the opportunity of being heard is a wrong which is personal to the party aggrieved. If therefore such a party does not complain, it is not the affairs of others to complain.

Further, we are conscious of the fact that the respondent is now an old man of over 90 years. A retrial would therefore serve no purpose other than to b cause further delay and injustice to the parties since the case was filed in 1986. Thus, for the foregoing reasons we find no valid ground to order a retrial.

The Background Facts

This is rather a sad and unfortunate case. The basic facts of this case as we c can gather from the Notes of Proceeding and the documents available are as follows.

The respondent is an illiterate old man. He had a piece of land held under EMR 434, Lot No. 905 measuring a little over 3 acres ('the subject land'). It is situated in Karak, in the Mukim of Sabai, Bentong District, in the State of d Pahang.

Sometime in 1981 he was approached by one Simanca a/l Juggiah together with a person by the name of Marimuthu s/o K. Pallaniappan who is the 1st defendant in this case. The meeting was in connection with the interest of the 1st defendant to develop the subject land into a housing estate. The respondent e agreed with the proposal. An agreement ('the agreement') was therefore executed between the respondent and the 1st defendant in which the former would be allotted 'a net figure of 20% of all the completed units with shop houses, terrace and semi detached houses'.

f Although acknowledging that he did affix his thumb prints on the agreement in 1981, the respondent said that the contents thereof were never explained to him. He denied ever meeting any lawyer in Kuala Lumpur to sign any document. He also said that he never met a Chinese lawyer in connection with the subject land.

g In respect of the two Powers of Attorney purportedly given by him to the 1st defendant, the respondent denied ever giving any, let alone the power to sell and transfer the subject land.

Upon knowing that the subject land had been transferred to a third party the h respondent went to see a lawyer for assistance. He also lodged a caveat on 15 May 1986 against the title of the subject land. This instant action under appeal was also filed seeking for the return of the subject land to him.

From the Notes of Proceeding it is clear that the respondent had consistently maintained that he never sold the subject land, never signed the Borang 14A i and never received any payment of its value.

During the trial, the 1st defendant also gave his account of the events. He testified that he agreed with the respondent to develop the subject land on a joint venture basis. An agreement between the respondent and his firm, Syarikat East Coast Company, was therefore prepared and signed. It was one of the terms in the Agreement that upon its execution the respondent had to hand over the issued document of title in respect of the subject land to the office of Messrs Paul F. Decruz & Co. the solicitor who attested their signatures in the agreement.

And it was also the evidence of the 1st defendant that since he did not have the money to pay for the surveyor's fee in connection with the application for the subdivision of the subject land he had to take a loan using the subject land as the security. We note that there is no provision in the agreement which allowed the 1st defendant or his firm to use the subject land as a security for any loan prior to the issuance of separate subdivided title deeds. Even at that stage the agreement provided that it was the respondent who would execute any relevant legal charges. There was no mention of any power of attorney to be given to the 1st defendant by the respondent.

However the 1st defendant claimed to have told the respondent about his intention to take a loan in order to develop the subject land. Hence, he managed to find a lender for the sum of RM30,000 with the help of one Kandasamy (DW2). And in order to secure the loan he went to the office of one Cheong Tian Fook together with Kandasamy and the respondent where only a clerk attended to them. He was made to sign a set of blank forms but he could not remember the nature of those forms. He denied knowing that those were transfer forms. When shown the Borang 14A the 1st defendant admitted that the signature found therein was his. He also said that when he signed the forms the respondent was present at the request of Cheong Tian Fook. But at that time the name of the respondent was not inserted in the forms. As for the issued document of title he gave it to DW2 before he signed the set of forms. Obviously it would appear that the term in the Agreement relating to the security and retention of the issued document of title was not observed. The 1st defendant also testified that he only received RM24,000 or RM25,000 from the total loan since there was an immediate deduction for interest which was at the rate of 5% per month.

Notwithstanding the absence of any provision in the agreement in which the respondent was contractually obliged to execute a power of attorney in favour of the 1st defendant or any other party, it was also the evidence of the 1st defendant that he secured two powers of attorney from the respondent appointing him as his attorney. The first was in relation to the development of the subject land while the second was in connection with the loan. In respect

of the second, the 1st defendant said that he was just following the instruction of DW2 since he needed the loan badly. But the 1st defendant admitted that the respondent did not sign the second power of attorney in Cheong Tian Fook's office but in the office of Sodhy & Ang. Due to the economic recession he could not pay back the loan resulting in the transfer of the subject land to the appellant which was never his intention in the first place.

Subsequently he went to the office of the appellant twice with a view to have the subject land retransferred to the respondent. During the first visit he was asked to pay RM30,000 but on the second visit a sum of RM200,000 was demanded on the ground that with the development of the surrounding lands the value of the subject land had also appreciated.

As for the proposed development of the subject land the 1st defendant disclosed that the Pahang State Government rejected the development proposal. Unfortunately he could not produce any rejection letter.

Mr. Lee Siew Chu (DW1) gave evidence for the appellant. DW1 said that initially she purchased the subject land together with one Chai Sai Eng vide an agreement dated 30 June 1982 (D2). At that time the appellant was yet to be incorporated. It took her nine months after the purchase to register the Appellant. Hence she only signed the Borang 14A in March 1983 and thus the date inserted was 9 March 1983.

DW1 went on to state the following, *inter alia*:

(i) that she did not know the respondent though she knew that he was the former registered owner of the subject land;

(ii) that during the negotiation for the sale she did not deal with the respondent. She dealt with the 1st defendant since he had the power of attorney. It was the 1st defendant who sold the subject land to her and Chai Sai Eng;

(iii) that she used the services of a lawyer by the name of Cheong Thiam Fook, in the purchase of the subject land;

(iv) that she paid RM32,000 for the subject land;

(v) that in her presence the 1st defendant signed the agreement (D2) and the Borang 14A. The respondent was not present;

(vi) that at the time of signing the documents the 1st defendant also gave the power of attorney to her lawyer;

(vii) that she was informed by her lawyer that since the 1st defendant had the power of attorney he could sign both the documents;

(viii) that initially she did not know the 1st defendant. It was Chai Sai Eng who came to know him through a broker; and

(ix) that the lawyer who handled the transaction had migrated and was no longer in practice.

We also note that D2 made no reference to any power of attorney or the fact that the 1st defendant was acting as the attorney for the respondent.

Similarly the Borang 14A dated 9 March 1983 was signed by the 1st defendant with no indication that he was doing so as the attorney for the respondent. There was thus no reference to any power of attorney, not even an indication of a power of attorney which has complied with s. 4 of the Powers of Attorney Act 1949.

The Appeal – Issues For Determination

Before us, learned counsel for the appellant submitted that the orders of the trial court should be reversed for the following reasons, in summary:

(i) that his client had acquired an indefeasible title to the subject land vide the Borang 14A which was signed by the 1st defendant as the attorney for the respondent;

(ii) that it was not alleged by the respondent that the act of the 1st defendant in signing the Borang 14A was outside the scope of his powers as the attorney and that it was done with a view of cheating him. The case of *Goh Hooi Yin v. Lim Teong Ghee & Ors* [1990] 2 CLJ 203; [1990] 2 CLJ (Rep) 48 was referred;

(iii) that the Land Office had registered the Borang 14A;

(iv) that the omission of any reference to the power of attorney in the Borang 14A was just an irregularity since the 1st defendant did have the power to sign it in the first place;

(v) that the failure to register or deposit the power of attorney with the Land Office at the time of the transfer was not fatal. The Land Office would be able to rectify the process. The case of *Choo Ah Kow v. Yeow Yew Chiam* [1989] 1 MLJ 187 and *Mohamed bin Buyong v. Pemungut Hasil Tanah Gombak & Ors* [1982] 2 MLJ 53 were cited in support of the proposition;

(vi) that the case for the respondent rested squarely on the allegation of forgery and not on insufficient or void instrument which is a separate and distinct ground albeit housed together with forgery in sub-section (2)(b) of s. 340 of the National Land Code ('NLC'). There was no prayer for a declaration to invoke this second limb of the subsection. The respondent should not go beyond his pleaded case. The case of *Government of Perak v. Muniandy* [1986] 1 MLJ 490 was relied on in support;

(vii) that the respondent had ratified the sale of the subject land by the 1st defendant to the appellant as evidenced by the Ratification Agreement signed by the respondent and the 1st defendant and the telegrams sent by the respondent or his agent to the 1st defendant;

(viii) that the appellant was in no way involved or implicated in the alleged forgery of the Borang 14A; and

(ix) that the appellant was a *bona fide* purchaser for value and thus entitled to claim indefeasibility of title or interest in the subject land. The cases of *Tai Lee Finance Co. Sdn Bhd v. Official Assignee & Ors* [1983] 1 CLJ 183; [1983] CLJ (Rep) 387 and *Adorna Properties Sdn Bhd v. Boonsom Boonyanit* [2001] 2 CLJ 133 were cited as the authorities as well as sub-section (3) of s. 340 of NLC.

Learned counsel for the respondent in his rebuttal basically submitted the following:

(a) that his client's case was based on forgery in which the appellant was not required to be a party. Hence the issue of fraud did not arise;

(b) that the Borang 14A was not signed by the 1st defendant as the attorney for the respondent;

(c) that the concept of *bona fide* purchaser for value in sub-section (3) of NLC applies only to a subsequent purchaser and not to an immediate purchaser;

(d) that the question of ratification should not arise since the purported Ratification Agreement was never marked as an exhibit during the trial; and

(e) that even the 1st defendant admitted that the respondent did not know about the transfer and the signature in the Borang 14A purporting to transfer the subject land.

Now, having perused the Appeal Record and the Notes of Proceeding and having heard the submissions of learned counsel for the parties we are of the view that the basic questions to ask in this appeal are these:

(i) What was the status of the signature of the 1st defendant in the Borang 14A?

(ii) whether the 1st defendant in fact signed the Borang 14A as the attorney for the respondent pursuant to the power of attorney?

(iii) That if the appellant had acquired the title or interest in the subject land through a forged instrument, could it not rely on the doctrine of *bona fide* purchaser for value housed in the proviso to s. 340(3) of NLC? and

(iv) Whether the Ratification Agreement entered into by the 1st defendant with the respondent is of any assistance to the appellant to maintain its title or interest on the subject land.

Question (i)

There was no dispute that the signature of the transferor appearing in the Borang 14A did not belong to the respondent. At any rate the denial of the respondent was unchallenged. (See: *Gian Singh & Co Ltd v. Banque De L'Indochine* [1974] 2 MLJ 177 PC). Hence, in truth the respondent never signed the Borang 14A for the purpose of transferring the ownership of the subject land to the appellant. Accordingly the instrument of transfer, that is the Borang 14A, was insufficient and void when it was presented for registration, a distinct vitiating factor to the doctrine of indefeasibility of title as provided under s. 340 of NLC. However that was not the pleaded case of the respondent. Hence we do not intend to dwell into that point or the implied view of immediate indefeasibility as expressed albeit obiter in *Doshi v. Yeoh Tiong Lay* [1975] 1 MLJ 85.

Meanwhile the 1st defendant admitted that the signature found in the Borang 14A purporting to be the transferor was his own signature. DW1, a director of the appellant, did not dispute the claim. Instead she admitted and confirmed that she was present when the 1st defendant signed the Borang 14A. Thus on plain reading of the Borang 14A that bore the signature of the 1st defendant and presented for registration, the inevitable conclusion would be that the signature represented to the whole world that it belonged to the respondent. Obviously the Land Office perceived that to be the case when the Borang 14A was accepted for registration. Without the signature the instrument would have been incomplete. In our judgment therefore the insertion of his signature by the 1st defendant without more and thus representing to be the transferor is a plain forgery. Hence s. 340(2)(b) of the NLC is relevant and applicable. (See:

Chiew Lip Seng v. Perwira Habib Bank (M) Bhd [1999] 5 CLJ 112; *Dr David Wong, Tenure and Land Dealings in the Malay States* at p. 361; *OCBC Bank (M) Bhd v. Pendaftar Hakmilik, Negeri Johor Darul Takzim* [1999] 2 CLJ 949).

Accordingly the title or interest of the appellant in the subject land would not be indefeasible on account of the forged signature in the instrument of transfer. Section 340 of the NLC reads:

> (1) The title or interest of any person or body for the time being registered as proprietor of any land, or in whose name any lease, charge or easement is for the time being registered, shall, subject to the following provisions of this section, be indefeasible.
>
> (2) **The title or interest of any such person or body shall not be indefeasible**:
>
> (a) in any case of fraud or misrepresentation to which the person or body, or any agent of the person or body, was a party or privy; or
>
> (b) **where registration was obtained by forgery,** or by means of an insufficient or void instrument; or
>
> (c) where the title or interest was unlawfully acquired by the person or body in the purported exercise of any power or authority conferred by any written law.
>
> (3) Where the title or interest of any person or body is defeasible by reason of any of the circumstances specified in sub-section (2):
>
> (a) it shall be liable to be set aside in the hands of any person or body to whom it may subsequently be transferred; and
>
> (b) any interest subsequently granted thereout shall be liable to be set aside in the hands of any person or body in whom it is for the time being vested:
>
> Provided that nothing in this sub-section shall affect any title or interest acquired by any purchaser in good faith and for valuable consideration, or by any person or body claiming through or under such a purchaser.
>
> (4) Nothing in this section shall prejudice or prevent:
>
> (a) the exercise in respect of any land or interest of any power of forfeiture or sale conferred by this Act or any other written law for the time being in force, or any power of avoidance conferred by any such law; or
>
> (b) the determination of any title or interest by operation of law. (emphasis added).

On the above ground alone that this appeal should be dismissed.

Question (ii)

While not denying that the author of the signature in the Borang 14A was the 1st defendant, the appellant however strenuously asserted that the 1st defendant signed on it as the attorney for the respondent and that the omission to refer or include the power of attorney was not fatal to its registration.

The respondent however gave evidence protesting against the assertion that he had given the power of attorney to the 1st defendant. Unfortunately for the respondent it was in evidence as exhibits two such powers of attorney duly executed by him and there was no challenge as to their authenticity. And it is in the second power of attorney that the power to sign the Borang 14A is asserted.

The pertinent question therefore is whether on the balance of probabilities the assertion by the appellant could be accepted as true based on the evidence, oral and documentary, and the surrounding circumstances at the material time.

From the relevant documentary evidence we note the following:

(a) Other than the signature is attested by a solicitor there is nothing else in the Borang 14A to indicate that the 1st defendant did sign it as the attorney for the respondent. Not even the registration number of the power of attorney was stated as should have been done if indeed the Borang 14A was signed by the attorney of the transferor. Such number would have been available since it was mentioned in the Ratification Agreement dated 16 April 1985 (AB – p. 8-9) entered into between the respondent and the 1st defendant that a power of attorney dated 22 February 1982 appointing the latter as the attorney of the former had been deposited with the High Court Registry Kuala Lumpur;

(b) D2 did not make any reference to any power of attorney although the signatures therein were attested by the same solicitor who did the attestation in the Borang 14A. The respondent's name was inserted as the vendor while the signature was that of the 1st defendant without any mention of his capacity in so doing; and

(c) The Ratification Agreement did not state that the 1st defendant was exercising his powers as the attorney for the respondent when he transferred the subject land to the appellant.

From the oral testimonies of witnesses there were crucial and startling disclosures made, for instance:

(i) the 1st defendant (DW3) testified that although he signed a set of forms in the office of a lawyer by the name of Cheong Tian Fook no lawyer was present at that time. He was only attended to by a female clerk named Shirley who did not explain the nature and contents of those forms to him. This piece of evidence was not challenged. Neither the lawyer nor the clerk was called to rebut this assertion. The 1st defendant went on to say that his intention was only to get the loan which was arranged by one Kandasamy (DW 2). He never intended to transfer the subject land to anyone and it was his understanding that the second power of attorney did not empower him to do such act;

(ii) DW2 in his evidence said that the purpose of the 1st defendant signing the forms was for a loan. There was no sale involved. This witness also testified that he did not know the contents of the forms when the 1st defendant signed on them;

(iii) SP1, Encik Zainal bin Abidin, the Penolong Pegawai Daerah (Tanah) Jabatan Tanah Bentong said that the transfer of the subject land had no connection with any power of attorney since no reference was made to any, not even a registration number of a power of attorney. According to this witness the Borang 14A was not preceded by the power of attorney or accompanied by it when it was sent for registration. SP1 went on to say that the transfer was done through the services of a lawyer whose attestation of the signature appearing therein would clear any doubt that it belonged to the transferor. It was also the evidence of this witness that his office would have rejected the Borang 14A if the signature therein was known to be not that of the respondent; and

(iv) DW1 in her evidence said that she was advised by her lawyer that the 1st defendant could sign the documents in respect of the sale of the subject land as he was the attorney of the respondent.

The documentary evidence is self-evident. (See: *Cheong Khean Sheng v. Public Prosecutor* [1970] 2 MLJ 175). There was absolutely no reference to any power of attorney *vis-à-vis* the signature of the 1st defendant in the Borang 14A. Thus, our conclusion is that it would be inconceivable to say that when the 1st defendant signed on the Borang 14A he was exercising his power as the attorney of the respondent. The oral evidence also supports such a conclusion. Based on the evidence of the 1st defendant it could not be said that when he signed the Borang 14A he had the power of attorney in mind

or that he was doing so as the attorney of the respondent. Hence if the signatory himself did not assert such a fact it would be unjustified to conclude or even assume without further proof that he did.

We are further convinced in our conclusion by the fact that after the registration of the Borang 14A the appellant or DW1 made no attempt to rectify the process by forwarding the power of attorney to the Land Office or took such other action indicative of what is now asserted. Indeed it was the evidence of DW1 that after the registration she had a peaceful possession of the subject land until she was served with the writ of summons of the respondent. In other words she was quite contented with the status of the signature of the 1st defendant as found in the Borang 14A.

Of course she could argue that she left the matter with her lawyer to deal. But her lawyer was her agent. And the general rule is that the knowledge of a solicitor is the knowledge of his client thereby depriving a client of the plea of lack or absence of knowledge due to the failure of his solicitor to disclose the true facts to him. (See: *Doshi v. Yeoh Tiong Lay* [1975] 1 MLJ 85). Thus, we do not think such argument is of any help to the appellant.

Learned counsel for the appellant relied quite heavily on the case of *Mohamed bin Buyong v. Pemungut Hasil Tanah Gombak & Ors (supra)*, to buttress his contention that any error as found in the process of registering the Borang 14A could be rectified.

With respect we are unable to agree that the cited authority can be of help to the case of the appellant. The basic difference is the purpose of the rectification. In the case of *Mohamed bin Buyong (supra)* it was to halt the perpetuation of errors or omissions committed. In the instant case to rectify the process would produce a contrary result. Indeed it was the evidence of SP1 that the Borang 14A should not have been registered as it was not in order.

Further in *Mohamed bin Buyong (supra)* the office copy of the power of attorney was submitted together with the relevant Borang 14A. It was also not in dispute that the registration number of the power of attorney was given. The errors were that it was subsequently shown that the power of attorney was never signed by the purported donor and that at the time of presenting the Borang 14A the issued document of title was missing.

In the instant case the power of attorney was never given to the Land Office whether before or at the time of presenting the Borang 14A for registration. There was also no evidence adduced to indicate that the Land Office was informed of the true status of the signature of the 1st defendant. In fact, from the evidence of SP1 it would appear that based on the documents presented

the impression given was that the signature found in Borang 14A belonged to the respondent. Moreover it was never shown that the power of attorney complied with the requirements of the Powers of Attorney Act 1949 including its registration with the court's registry. But we are not inclined to consider this aspect of the power of attorney as it would be going beyond the pleaded case of the respondent.

Our answer to question (ii) is therefore in the negative.

Question (iii)

The term '*bona fide* purchaser' has been used in a host of cases. Simply put it means a buyer in good faith. And the basic element of good faith is the absence of fraud, deceit or dishonesty and the knowledge or means of knowledge of such at the time of entry into a transaction. But the overriding consideration is 'the particular circumstances of each case'. (See: *Pekan Nenas Industries Sdn Bhd v. Chang Ching Chuen & Ors* [1998] 1 CLJ 793; *Ong Ban Chai & Ors v. Seah Siang Mong* [1998] 3 CLJ 637).

In the instant case there are at least three crucial facts or circumstances that warrant consideration, namely the undisputed signature of the 1st defendant in the Borang 14A, the admission by DW1 that she was present when the 1st defendant signed the document and the availability of the services of a solicitor to DW1.

But even before coming to any conclusion on the issue we note that in its statement of defence the appellant did not plead or rely on the doctrine of *bona fide* purchaser for value. As such there is therefore no necessity for us to deal with the issue. We are guided by the basic procedural principle in that a party in a suit is bound by its own pleadings. (See: *Government of Perak v. Muniandy (supra)*.

But even if we were to consider that aspect of the submission of learned counsel for the appellant our answer would be in the negative. The simple reason is that DW1 who was then the actual person who concluded the transaction knew of the falsity of the signature of the 1st defendant as found in the Borang 14A since she was present at the time it was put down. She was aware of the deceit involved and practiced upon not only to the respondent but also to the Land Office. Yet DW1 and her solicitor at that time allowed it to happen and in fact benefited from such deception and falsity. Reliance upon the power of attorney is not the answer. We have already made our conclusion on that issue. Hence being the 'nominee' of DW1 as pleaded the appellant should not and could not be heard to cry for the invocation of the proviso to s. 340(3) of the NLC.

Question (iv)

Reliance on the Ratification Agreement was also not the pleaded case of the appellant. In fact the statement of defence only relied on one issue, namely, that the 1st defendant was the attorney of the respondent. Thus we are not obliged and should not make any conclusion on this issue otherwise we would be venturing into an area that was not properly before the trial court. (See: *Tajjul Ariffin bin Mustafa v. Heng Cheng Hon* [1993] 3 CLJ 117).

At any rate we do not find the Ratification Agreement is of any assistance to the appellant. Firstly, it was not a privy to it. It may only be relevant due to the purported acknowledgment therein by the respondent of the transfer of the subject land to the appellant. But the acknowledgement itself did not indicate that the respondent also acknowledged that the transfer was done properly by his attorney. Secondly, we find the terms in the said agreement conflicting. Even with the benefit of hindsight it was never expressed that the 1st defendant acted as the attorney of the respondent when he signed the Borang 14A or that he was exercising his power under the power of attorney. Thirdly, if indeed the respondent agreed and consented to the transfer it was not stated the reason or ground for the demand of retransfer. And the promise by the 1st defendant to endeavour to secure the retransfer would also have been unnecessary. Accordingly in our view the terms in the said agreement only strengthened the assertion that when the Borang 14A was signed by the 1st defendant something was amiss and known to those involved.

Conclusion

We have considered the other points raised by learned counsel for the parties in the course of hearing this appeal. We do not think our views on them would have any effect on the overall conclusion that we have arrived at in this appeal.

Accordingly for the reasons given above we are inclined to dismiss this appeal and affirm the decision and orders of the High Court as given. We also order costs to the respondent in this appeal to be taxed. Deposit is to be paid to the respondent on account of taxed costs.